

37 Am. Jur. 2d Fraud and Deceit § 122

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

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IV. False Representations

F. Intent to Deceive, or to Induce Reliance; Knowledge of Falsity

2. Knowledge of Falsity

§ 122. Reckless disregard of falsity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#) 13(3)

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 59](#) (Complaint, petition, or declaration—Allegation—Defendant's representations made in reckless disregard of truth)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 70](#) (Answer—Defense—Statements nonactionable opinions)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 224](#) (Instruction to jury—Liability for making representations with no apparent ground for believing representations are true)

A representation recklessly made, without knowing whether or not it is true, cannot be a statement honestly believed but, on the contrary, is regarded as a false statement knowingly made.¹ Thus, the scienter, or intent to deceive, requirement, for purposes of a fraud claim, can be satisfied by a showing of recklessness.² According to various authorities, a fraudulent representation may include a statement which—

— is made recklessly³ and for the purpose of inducing action upon it.⁴

— is recklessly made with the intent of deceiving the opposite party.⁵

- is made in reckless disregard of its truth or falsity.⁶
- is made recklessly without any knowledge of its truth.⁷
- is made in conscious indifference to its truth.⁸
- is a false or misleading statement and made recklessly and willfully without regard to its consequences, and with an intent to mislead and deceive the plaintiff.⁹

Some states require that a representation made recklessly must be a positive assertion in order to be actionable.¹⁰

The rule that one who makes a statement as if based on personal knowledge or makes such a positive and unqualified statement as implies knowledge on the speaker's part, when in fact the speaker has no knowledge on the subject, is guilty of fraud if the statement proves to be false, is generally held to apply only where the assertion is in respect of a matter that is definitely ascertainable, as distinguished from a matter of opinion, estimate, or judgment.¹¹

Observation:

The difference between the torts of "negligent misrepresentation" and "fraudulent misrepresentation" is that the latter requires proof that the defendant knew the statement was untrue or was reckless as to whether the statement was true or false while the former merely requires proof that the defendant failed to exercise reasonable care or competence to obtain or communicate true information.¹²

Misrepresentations made recklessly or innocently will not sustain an action for promissory fraud.¹³

CUMULATIVE SUPPLEMENT

Cases:

Scienter, as element of fraud claim under Georgia law, may be shown by a reckless representation. *Smith-Tyler v. Bank of America, N.A.*, 992 F. Supp. 2d 1277 (N.D. Ga. 2014).

Under Texas law, Chapter 11 debtor, a limited liability company (LLC) in the business of selling fractional interests in Texas oil and gas wells, its sole member, and others knew that representation that they would keep no more than 4% of investor funds as management fee was false or, at a minimum, representation was made recklessly, as required to support investors' common law fraud claims; cash balance e-mail received by member showed accounts receivable on certain wells "Less: 25% Fees." *In re Primera Energy, LLC*, 579 B.R. 75 (Bankr. W.D. Tex. 2017).

[END OF SUPPLEMENT]

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Footnotes

1 Otis & Co. v. Grimes, 97 Colo. 219, 48 P.2d 788 (1935); Davis v. Central Land Co., 162 Iowa 269, 143
2 N.W. 1073 (1913).
3 Lord v. Souder, 748 A.2d 393 (Del. 2000).
4 As to the requirement of an intent to deceive, see §§ 109 to 118.
5 Sturm v. Harb Development, LLC, 298 Conn. 124, 2 A.3d 859 (2010); Krahmer v. Christie's Inc., 911 A.2d
6 399 (Del. Ch. 2006).
7 Sturm v. Harb Development, LLC, 298 Conn. 124, 2 A.3d 859 (2010).
8 Perimeter Realty v. GAPI, Inc., 243 Ga. App. 584, 533 S.E.2d 136 (2000).
9 Schooley v. Orkin Extermination, Co., Inc., 502 F.3d 759 (8th Cir. 2007) (applying Iowa law); Sun Nurseries,
10 Inc. v. Lake Erma, LLC, 730 S.E.2d 556 (Ga. Ct. App. 2012); Van Sickle Const. Co. v. Wachovia Commercial
11 Mortg., Inc., 783 N.W.2d 684 (Iowa 2010); Renaissance Leasing, LLC v. Vermeer Mfg. Co., 322 S.W.3d
12 112 (Mo. 2010).
13 PCR Contractors, Inc. v. Danial, 354 S.W.3d 610 (Ky. Ct. App. 2011).
14 In re Stafford's in the Field, Inc., 192 B.R. 29 (Bankr. D. N.H. 1996) (applying New Hampshire law).
15 Brodeur v. American Home Assur. Co., 169 P.3d 139 (Colo. 2007).
16 Ausley v. Bishop, 133 N.C. App. 210, 515 S.E.2d 72 (1999); Livingston Livestock Exchange, Inc. v. Hull
17 State Bank, 14 S.W.3d 849 (Tex. App. Beaumont 2000).
18 Damon v. Sun Co., Inc., 87 F.3d 1467 (1st Cir. 1996) (applying Massachusetts law; opinions cannot be basis
19 of fraud claim); Coons v. Bank of Commerce, 233 Ky. 457, 26 S.W.2d 15 (1930).
20 Wilkinson v. Shoney's, Inc., 269 Kan. 194, 4 P.3d 1149 (2000).
21 As to negligent misrepresentations, see §§ 128 to 130.
22 Southland Bank v. A & A Drywall Supply Co., Inc., 21 So. 3d 1196 (Ala. 2008).

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